

# **EXHIBIT 1**

**Pertinent pages of each of Kuraku  
Federal Income Tax Returns  
For 2018, 2019 and 2020**

<b>Form 1120</b> Department of the Treasury Internal Revenue Service		<b>U.S. Corporation Income Tax Return</b> For calendar year 2018 or tax year beginning <u>Oct 1</u> , 2018, ending <u>Sep 30</u> , 20 <u>19</u> ▶ Go to <a href="http://www.irs.gov/Form1120">www.irs.gov/Form1120</a> for instructions and the latest information.		OMB No. 1545-0123 <div style="font-size: 2em; font-weight: bold;">2018</div>	
<b>A Check if:</b> 1a Consolidated return (attach Form 851) <input type="checkbox"/> b Life/nonlife consolidated return <input type="checkbox"/> 2 Personal holding co. (attach Sch. PH) <input type="checkbox"/> 3 Personal service corp. (see instructions) <input type="checkbox"/> 4 Schedule M-3 attached <input type="checkbox"/>		<b>NAME OR PRINT</b> Name <u>KU-RAKU NEW YORK INC.</u> Number, street, and room or suite no. If a P.O. box, see instructions. <u>3954 BROADWAY</u> City or town, state or province, country, and ZIP or foreign postal code <u>NEW YORK NY 10032</u>		<b>B Employer identification number</b> <u>1957</u> <b>C Date incorporated</b> <u>10/16/2018</u> <b>D Total assets (see instructions)</b> \$ <u>67,028</u>	
		<b>E Check if:</b> (1) <input type="checkbox"/> Initial return (2) <input type="checkbox"/> Final return (3) <input type="checkbox"/> Name change (4) <input type="checkbox"/> Address change			
Income	1a Gross receipts or sales		1a	0	
	b Returns and allowances		1b		
	c Balance. Subtract line 1b from line 1a		1c	0	
	2 Cost of goods sold (attach Form 1125-A)		2		
	3 Gross profit. Subtract line 2 from line 1c		3	0	
	4 Dividends and inclusions (Schedule C, line 23, column (a))		4		
	5 Interest		5		
	6 Gross rents		6		
	7 Gross royalties		7		
	8 Capital gain net income (attach Schedule D (Form 1120))		8		
	9 Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797)		9		
10 Other income (see instructions—attach statement)		10			
11 Total income. Add lines 3 through 10		11	0		
Deductions (See instructions for limitations on deductions.)	12 Compensation of officers (see instructions—attach Form 1125-E)		12		
	13 Salaries and wages (less employment credits)		13		
	14 Repairs and maintenance		14		
	15 Bad debts		15		
	16 Rents		16		
	17 Taxes and licenses		17	50	
	18 Interest (see instructions)		18		
	19 Charitable contributions		19		
	20 Depreciation from Form 4562 not claimed on Form 1125-A or elsewhere on return (attach Form 4562)		20		
	21 Depletion		21		
	22 Advertising		22		
23 Pension, profit-sharing, etc., plans		23			
24 Employee benefit programs		24			
25 Reserved for future use		25			
26 Other deductions (attach statement) <u>AMORTIZATION</u>		26	1,140		
27 Total deductions. Add lines 12 through 26		27	1,190		
28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11.		28	-1,190		
29a Net operating loss deduction (see instructions)		29a			
b Special deductions (Schedule C, line 24, column (c))		29b			
c Add lines 29a and 29b		29c			
Tax, Refundable Credits, and Payments	30 Taxable income. Subtract line 29c from line 28. See instructions		30	-1,190	
	31 Total tax (Schedule J, Part I, line 11)		31	0	
	32 2018 net 965 tax liability paid (Schedule J, Part II, line 12)		32		
	33 Total payments, credits, and section 965 net tax liability (Schedule J, Part III, line 23)		33		
	34 Estimated tax penalty. See instructions. Check if Form 2220 is attached <input type="checkbox"/>		34		
	35 Amount owed. If line 33 is smaller than the total of lines 31, 32, and 34, enter amount owed		35		
	36 Overpayment. If line 33 is larger than the total of lines 31, 32, and 34, enter amount overpaid		36	0	
	37 Enter amount from line 36 you want: <b>Credited to 2019 estimated tax</b> ▶ <b>Refunded</b> ▶		37		
<div style="display: flex; justify-content: space-between;"> <div style="width: 40%;"> <b>Sign Here</b>          Signature of officer _____ Date _____       </div> <div style="width: 40%;">         Title <u>PRESIDENT</u> </div> <div style="width: 15%; border: 1px solid black; padding: 5px;">         May the IRS discuss this return with the preparer shown below? See instructions. <input type="checkbox"/> Yes <input type="checkbox"/> No       </div> </div>					
Paid Preparer Use Only	Print/Type preparer's name		Preparer's signature		Date
	<u>KIL S JUNG, CPA</u>		<u>KIL S JUNG, CPA</u>		<u>05/15/2023</u>
	Firm's name ▶ <u>KIL S. JUNG, CPA</u>		Firm's EIN ▶ <u>1360</u>		PTIN <u>P01717931</u>
Firm's address ▶ <u>16 W 32ND ST, STE 1104 NEW YORK NY 10001</u>		Phone no. <u>(212) 714-1772</u>			



<b>Form 1120</b> Department of the Treasury Internal Revenue Service		<b>U.S. Corporation Income Tax Return</b> For calendar year 2019 or tax year beginning <u>Oct 1</u> , 2019, ending <u>Sep 30</u> , 20 <u>20</u> ▶ Go to <a href="http://www.irs.gov/Form1120">www.irs.gov/Form1120</a> for instructions and the latest information.		OMB No. 1545-0123 <div style="font-size: 2em; font-weight: bold;">2019</div>	
<b>A Check if:</b> 1a Consolidated return (attach Form 851) <input type="checkbox"/> b Life/nonlife consolidated return <input type="checkbox"/> 2 Personal holding co. (attach Sch. PH) <input type="checkbox"/> 3 Personal service corp. (see instructions) <input type="checkbox"/> 4 Schedule M-3 attached <input type="checkbox"/>		<b>NAME OR PRINT</b> Name <u>KU-RAKU NEW YORK INC.</u> Number, street, and room or suite no. If a P.O. box, see instructions. <u>3952 BROADWAY</u> City or town, state or province, country, and ZIP or foreign postal code <u>NEW YORK NY 10032</u>		<b>B Employer identification number</b> <div style="background-color: black; color: white; padding: 2px;">[REDACTED]</div> 1957 <b>C Date incorporated</b> <u>10/16/2018</u> <b>D Total assets (see instructions)</b> \$ <u>183,709</u>	
<b>E Check if:</b> (1) <input type="checkbox"/> Initial return (2) <input type="checkbox"/> Final return (3) <input type="checkbox"/> Name change (4) <input type="checkbox"/> Address change					
<b>Income</b> 1a Gross receipts or sales <span style="float: right;">1a <u>0</u></span> b Returns and allowances <span style="float: right;">1b <u>          </u></span> c Balance. Subtract line 1b from line 1a <span style="float: right;">1c <u>0</u></span> 2 Cost of goods sold (attach Form 1125-A) <span style="float: right;">2 <u>          </u></span> 3 Gross profit. Subtract line 2 from line 1c <span style="float: right;">3 <u>0</u></span> 4 Dividends and inclusions (Schedule C, line 23) <span style="float: right;">4 <u>          </u></span> 5 Interest <span style="float: right;">5 <u>          </u></span> 6 Gross rents <span style="float: right;">6 <u>          </u></span> 7 Gross royalties <span style="float: right;">7 <u>          </u></span> 8 Capital gain net income (attach Schedule D (Form 1120)) <span style="float: right;">8 <u>          </u></span> 9 Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797) <span style="float: right;">9 <u>          </u></span> 10 Other income (see instructions—attach statement) <span style="float: right;">10 <u>          </u></span> 11 <b>Total income.</b> Add lines 3 through 10 <span style="float: right;">11 <u>0</u></span>		<b>Deductions (See instructions for limitations on deductions.)</b> 12 Compensation of officers (see instructions—attach Form 1125-E) <span style="float: right;">12 <u>          </u></span> 13 Salaries and wages (less employment credits) <span style="float: right;">13 <u>          </u></span> 14 Repairs and maintenance <span style="float: right;">14 <u>          </u></span> 15 Bad debts <span style="float: right;">15 <u>          </u></span> 16 Rents <span style="float: right;">16 <u>          </u></span> 17 Taxes and licenses <span style="float: right;">17 <u>50</u></span> 18 Interest (see instructions) <span style="float: right;">18 <u>          </u></span> 19 Charitable contributions <span style="float: right;">19 <u>          </u></span> 20 Depreciation from Form 4562 not claimed on Form 1125-A or elsewhere on return (attach Form 4562) <span style="float: right;">20 <u>357</u></span> 21 Depletion <span style="float: right;">21 <u>          </u></span> 22 Advertising <span style="float: right;">22 <u>          </u></span> 23 Pension, profit-sharing, etc., plans <span style="float: right;">23 <u>          </u></span> 24 Employee benefit programs <span style="float: right;">24 <u>          </u></span> 25 Reserved for future use <span style="float: right;">25 <u>          </u></span> 26 Other deductions (attach statement) <u>Other Deductions Statement</u> <span style="float: right;">26 <u>11,886</u></span> 27 <b>Total deductions.</b> Add lines 12 through 26 <span style="float: right;">27 <u>12,293</u></span> 28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11. <span style="float: right;">28 <u>-12,293</u></span> 29a Net operating loss deduction (see instructions) <span style="float: right;">29a <u>          </u></span> b Special deductions (Schedule C, line 24) <span style="float: right;">29b <u>          </u></span> c Add lines 29a and 29b <span style="float: right;">29c <u>          </u></span>			
<b>Tax, Refundable Credits, and Payments</b> 30 <b>Taxable income.</b> Subtract line 29c from line 28. See instructions <span style="float: right;">30 <u>-12,293</u></span> 31 Total tax (Schedule J, Part I, line 11) <span style="float: right;">31 <u>0</u></span> 32 2019 net 965 tax liability paid (Schedule J, Part II, line 12) <span style="float: right;">32 <u>          </u></span> 33 Total payments, credits, and section 965 net tax liability (Schedule J, Part III, line 23) <span style="float: right;">33 <u>          </u></span> 34 Estimated tax penalty. See instructions. Check if Form 2220 is attached <input type="checkbox"/> <span style="float: right;">34 <u>          </u></span> 35 <b>Amount owed.</b> If line 33 is smaller than the total of lines 31, 32, and 34, enter amount owed <span style="float: right;">35 <u>          </u></span> 36 <b>Overpayment.</b> If line 33 is larger than the total of lines 31, 32, and 34, enter amount overpaid <span style="float: right;">36 <u>0</u></span> 37 Enter amount from line 36 you want: <b>Credited to 2020 estimated tax</b> ▶ <b>Refunded</b> ▶ <span style="float: right;">37 <u>          </u></span>					
<b>Sign Here</b> Signature of officer <u>KIL S JUNG, CPA</u> Date <u>10/22/2020</u> Title <u>PRESIDENT</u>		Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge. <div style="border: 1px solid black; padding: 5px; width: fit-content;">           May the IRS discuss this return with the preparer shown below? See instructions. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No         </div>			
<b>Paid Preparer Use Only</b> Print/Type preparer's name <u>KIL S JUNG, CPA</u> Preparer's signature <u>KIL S JUNG, CPA</u> Date <u>05/15/2023</u> Check <input checked="" type="checkbox"/> if self-employed PTIN <u>P01717931</u> Firm's name ▶ <u>KIL S. JUNG, CPA</u> Firm's EIN ▶ <u>[REDACTED] 1360</u> Firm's address ▶ <u>16 W 32ND ST, STE 1104 NEW YORK NY 10001</u> Phone no. <u>(212) 714-1772</u>					





## U.S. Corporation Income Tax Return

OMB No. 1545-0123

Form **1120**  
Department of the Treasury  
Internal Revenue ServiceFor calendar year 2020 or tax year beginning Oct 1, 2020, ending Sep 30, 20 21Go to [www.irs.gov/Form1120](http://www.irs.gov/Form1120) for instructions and the latest information.**2020**

## A Check if:

1a Consolidated return (attach Form 851) ☐b Life/nonlife consolidated return ☐2 Personal holding co. (attach Sch. PH) ☐3 Personal service corp. (see instructions) ☐4 Schedule M-3 attached ☐TYPE  
OR  
PRINT

Name

KU-RAKU NEW YORK INC.

Number, street, and room or suite no. If a P.O. box, see instructions.

3952 BROADWAY

City or town, state or province, country, and ZIP or foreign postal code

NEW YORK

NY 10032

B Employer identification number

1957

C Date incorporated

10/16/2018

D Total assets (see instructions)

\$ 164,201

E Check if: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change

Income	1a	Gross receipts or sales	1a	0
	b	Returns and allowances	1b	
	c	Balance. Subtract line 1b from line 1a	1c	0
	2	Cost of goods sold (attach Form 1125-A)	2	
	3	Gross profit. Subtract line 2 from line 1c	3	0
	4	Dividends and inclusions (Schedule C, line 23)	4	
	5	Interest	5	
	6	Gross rents	6	
	7	Gross royalties	7	
	8	Capital gain net income (attach Schedule D (Form 1120))	8	
	9	Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797)	9	
10	Other income (see instructions—attach statement)	10		
11	Total income. Add lines 3 through 10	11	0	
Deductions (See instructions for limitations on deductions.)	12	Compensation of officers (see instructions—attach Form 1125-E)	12	
	13	Salaries and wages (less employment credits)	13	
	14	Repairs and maintenance	14	
	15	Bad debts	15	
	16	Rents	16	
	17	Taxes and licenses	17	50
	18	Interest (see instructions)	18	
	19	Charitable contributions	19	
	20	Depreciation from Form 4562 not claimed on Form 1125-A or elsewhere on return (attach Form 4562)	20	4,102
	21	Depletion	21	
	22	Advertising	22	
	23	Pension, profit-sharing, etc., plans	23	
	24	Employee benefit programs	24	
	25	Reserved for future use	25	
	26	Other deductions (attach statement) Other Deductions Statement	26	16,634
	27	Total deductions. Add lines 12 through 26	27	20,786
	28	Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11.	28	-20,786
Tax, Refundable Credits, and Payments	29a	Net operating loss deduction (see instructions)	29a	
	b	Special deductions (Schedule C, line 24)	29b	
	c	Add lines 29a and 29b	29c	
	30	Taxable income. Subtract line 29c from line 28. See instructions	30	-20,786
	31	Total tax (Schedule J, Part I, line 11)	31	0
32	2020 net 965 tax liability paid (Schedule J, Part II, line 12)	32		
33	Total payments, credits, and section 965 net tax liability (Schedule J, Part III, line 23)	33	0	
34	Estimated tax penalty. See instructions. Check if Form 2220 is attached <input type="checkbox"/>	34		
35	Amount owed. If line 33 is smaller than the total of lines 31, 32, and 34, enter amount owed	35		
36	Overpayment. If line 33 is larger than the total of lines 31, 32, and 34, enter amount overpaid	36	0	
37	Enter amount from line 36 you want: Credited to 2021 estimated tax <input type="checkbox"/> Refunded <input type="checkbox"/>	37		

Sign  
Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer

Date

PRESIDENT

Title

May the IRS discuss this return with the preparer shown below? See instructions. ☐ Yes ☐ NoPaid  
Preparer  
Use Only

Print/Type preparer's name

KIL S JUNG, CPA

Preparer's signature

KIL S JUNG, CPA

Date

08/11/2022

Check ☒ if self-employed

PTIN

P01717931

Firm's name KIL S. JUNG, CPA

Firm's EIN

1360

Firm's address 16 W 32ND ST, STE 1104 NEW YORK NY 10001

Phone no. (212) 714-1772

(Rev. December 2011)  
Department of the Treasury  
Internal Revenue Service

Exploit Exhibits 1-5 to Declaration Page 7 of 54

**Information on Certain Persons Owning the Corporation's Voting Stock**

► Attach to Form 1120.

► See instructions on page 2.

OMB No. 1545-0123

Name \_\_\_\_\_

Employer identification number (EIN)

KU-RAKU NEW YORK INC.

1957

## Part I

**Certain Entities Owning the Corporation's Voting Stock.** (Form 1120, Schedule K, Question 4a). Complete columns (i) through (v) below for any foreign or domestic corporation, partnership (including any entity treated as a partnership), trust, or tax-exempt organization that owns directly 20% or more, or owns, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote (see instructions).

[illegible]

## Part II

**Certain Individuals and Estates Owning the Corporation's Voting Stock.** (Form 1120, Schedule K, Question 4b). Complete columns (i) through (iv) below for any individual or estate that owns directly 20% or more, or owns, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote (see instructions).

[illegible]

# **EXHIBIT 2**

## **Minutes of the First Meeting of the Board of Directors of Kuraku**

## Minutes of First Meeting of Board of Directors of Ku-raku New York Inc.

The board of directors of Ku-raku New York Inc. held its first meeting on October 20, 2018, at 133 West 3<sup>rd</sup> Street New York, NY 10012.

The following directors, constituting a quorum of the full board, were present at the meeting:

Yasuko Negita

Miho Maki

The chairperson announced that the meeting was held pursuant to written waiver of notice signed by each of the directors. Upon a motion duly made, seconded, and unanimously carried, the waiver was made a part of the records of the meeting. It now precedes the minutes of this meeting in the corporate records book.

### **Articles of Incorporation**

The chairperson announced that the articles of incorporation or similar organizing instrument of this corporation was filed with the office of NYS Department of State on October 16, 2018.

RESOLVED, that the secretary of this corporation is directed to see that a copy of the articles of incorporation or similar organizing instrument of this corporation, file-stamped or certified by the secretary of state or other appropriate state office or official, is kept at the corporation's principal office.



### **Bylaws**

There was then presented to the meeting for adoption a proposed set of bylaws of the corporation. The bylaws were considered and discussed and, on motion duly made and seconded, it was unanimously

RESOLVED, that the bylaws presented to this meeting be and hereby are adopted as the bylaws of the corporation;

RESOLVED FURTHER, that the secretary of this corporation is directed to see that a copy of the bylaws is kept at the corporation's principal office.

### **Election of Officers**

The chairperson then announced that the next item of business was the election of officers. Upon motion, the following persons were unanimously elected to the offices shown after their names:

Miho Maki	Secretary
Yasuko Negita	President
Yasuko Negita	Treasurer

Each officer who was present accepted his or her office. Thereafter, the president presided at the meeting as chairperson of the meeting, and secretary the of the corporation acted as secretary of the meeting.

### **Principal Office**

After discussion as to the exact location of the corporation's principal office for the transaction of business in the county named in the bylaws, upon motion duly made and seconded, it was

RESOLVED, that the principal office of this corporation shall be located at 3954 Broadway New York, NY 10032.

### **Bank Account**

Upon motion duly made and seconded, it was

RESOLVED, that the funds of this corporation shall be deposited with

\_\_\_\_\_ Chase \_\_\_\_\_ Bank.

RESOLVED FURTHER, that the treasurer of this corporation be and hereby is authorized and directed to establish an account with said bank and to deposit the funds of this corporation therein.

RESOLVED FURTHER, that any officer, employee, or agent of this corporation be and is authorized to endorse checks, drafts, or other evidences of indebtedness made payable to this corporation, but only for the purpose of deposit.

RESOLVED FURTHER, that all checks, drafts, and other instruments obligating this corporation to pay money shall be signed on behalf of this corporation by any of the following persons:

Yasuko Negita

Miho Maki

RESOLVED FURTHER, that said bank be and hereby is authorized to honor and pay all checks and drafts of this corporation signed as provided herein.

RESOLVED FURTHER, that the authority hereby conferred shall remain in force until revoked by the board of directors of this corporation and until written notice of such revocation shall have been received by said bank.

RESOLVED FURTHER, that the secretary of this corporation be and hereby is authorized to certify as to the continuing authority of these resolutions, the persons authorized to sign on behalf of this corporation, and the adoption of said bank's standard form of resolution, provided that said form does not vary materially from the terms of the foregoing resolutions.

### **Stock Ownership**

Upon motion duly made and seconded, it was

RESOLVED, that upon the payment in full of the stock subscription price as set forth in the Shareholder's Agreement, one hundred (100) shares of the capital stock of the Corporation shall be issued and outstanding and shall be held, directly and/or beneficially, as follows:

Yasuko Negita : ninety (90) shares; and

Miho Maki : ten (10) shares

The remaining one hundred (100) shares of the capital stock of the Corporation shall remain unissued.

### **Corporate Seal**

The secretary presented to the meeting for adoption a proposed form of seal of the corporation. Upon motion duly made and seconded, it was:

RESOLVED, that the form of corporate seal presented to this meeting be and hereby is adopted as the seal of this corporation, and the secretary of the corporation is directed to place an impression thereof in the space next to this resolution.

### **Corporate Certificates**

The secretary then presented to the meeting proposed director, sponsor, membership, or other forms of corporate certificates for approval by the board. Upon motion duly made and seconded, it was

RESOLVED, that the form of certificates presented to this meeting are hereby adopted for use by this corporation and the secretary is directed to attach a copy of each form of certificate to the minutes of this meeting.

*[End option]*

Since there was no further business to come before the meeting, on motion duly made and seconded, the meeting was adjourned.

Dated: October 20, 2018

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Signature

Miho Make, Secretary



# **EXHIBIT 3**

**Quarterly Combined Withholding,  
Wage Reporting, and Unemployment  
Insurance Return filed by Kuraku**



New York State Department of Taxation and Finance

(05/23) V1.4

**Quarterly Combined Withholding, Wage Reporting,  
And Unemployment Insurance Return****NYS-45 WEB****Reference these numbers in all correspondence:**UI Employer  
registration number **580** **0**Withholding  
identification number **1957****Employer legal name:**

KU-RAKU NEW YORK INC.

Mark an **X** in only **one** box to indicate the quarter (a separate  
return must be completed for each quarter) and enter the year.Jan 1 - ☒ Apr 1 - ☐ July 1 - ☐ Oct 1 - ☐  
Mar 31 **1** Jun 30 **2** Sep 30 **3** Dec 31 **4** Year **22**  
YYDo you offer dependent health insurance benefits to any employee? ..... Yes ☐ No ☒If **seasonal employer**, mark an **X** in the box ..... ☐**Number of employees**Enter the number of full-time and part-time covered employees  
who worked during or received pay for the week that includes  
the 12th day of each month.

a. First month

b. Second month

c. Third month

**11****9****7**Disaster relief ☐**Part A – Unemployment insurance (UI) information**

1. Total remuneration paid this quarter ..... **50,830.00**

2. Remuneration paid this quarter to  
in excess of the UI wage base  
since January 1 ..... **0.00**

3. Wages subject to contribution  
(subtract line 2 from line 1) ..... **50,830.00**

4. UI contributions due  
UI rate ..... **4.025** % ..... **2,045.91**

5. Re-employment service fund  
(multiply line 3 x .00075) ..... **38.12**

6a. Interest on contributions ..... **0.00**

6b. UI previously underpaid with  
interest ..... **0.00**

7. Total of lines 4, 5, 6a and 6b ..... **2,084.03**

8. Enter UI previously overpaid ..... **0.00**

9. Total UI amounts due (if line 7  
is greater than line 8, enter difference) ... **2,084.03**

10. Total UI overpaid (if line 8 is greater  
than line 7, enter the difference) \* ..... **0.00**

**Part B – Withholding tax (WT) information**

12. New York State tax withheld ..... **1,868.35**

13. New York City tax withheld ..... **1,134.55**

14. Yonkers tax withheld ..... **0.00**

15. Total tax withheld  
(add lines 12, 13, and 14) ..... **3,002.90**

16. WT credit from previous  
quarter's return (see instr.) ..... **0.00**

17. Form NYS-1 payments made  
for quarter ..... **3,122.86**

18. Total payments  
(add lines 16 and 17) ..... **3,122.86**

19. Total WT amounts due (if line 15 is  
greater than line 18, enter difference) ... **0.00**

20. Total WT overpaid (if line 18 is  
greater than line 15, enter difference  
here and mark an **X** in 20a or 20b) \* ..... **119.96**

20a. Apply to outstanding  
liabilities and/or refund ..... ☐

20b. Credit to next quarter  
withholding tax ..... ☒

21. Total payment due  
(add lines 9 and 19) ..... **2,084.03**

**\* An overpayment of either tax cannot be used to offset the amount due on the other tax.****Part C – Wage Reporting Summary**

C Total UI total remuneration/gross  
wages paid this quarter ..... **50,830.00**

D Total gross wages or distribution ..... **50,829.61**

Total number of employees ..... **13**

E Total tax withheld ..... **3,002.90**

**Sign your return:** I certify that the information on this return and any attachments is to the best of my knowledge and belief true, correct, and complete.

Taxpayer's signature

Signer's name

Title

Date

**04/26/2022 00:39:54**

Telephone number

Withholding  
identification number [REDACTED] 1957

**Part D – Form NYS–1 corrections/additions**

Web filed not applicable

**Part E – Change of business information**

23. If you permanently ceased paying wages, enter the date (MMDDYY) of the final payroll ..... [REDACTED]

24. Did you sell or transfer all or part of your business? ☐ Yes ☒ No

If Yes, indicate if sale or transfer was in ☐ Whole or ☐ Part

<b>Paid preparer's use</b>	Preparer's signature	Telephone number	Date	Mark an X if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
	Preparer's firm name (or yours, if self-employed)	Address		Preparer's EIN	
Payroll service name				Payroll service's EIN	

**Unemployment insurance (UI) payment details** (Account saved ☒)

Payment date <b>05/02/2022</b>	Account type <b>Business checking</b>
Bank name <b>JPMORGAN CHASE BANK, NA</b>	Bank routing number <b>021000021</b>
Account holder <b>KU-RAKU NEW YORK INC</b>	Account number <b>XXXXXX6305</b>
Amount due (\$) <b>2,084.03</b>	Payment amount (\$) <b>2,084.03</b>

**Withholding tax (WT) payment details** (Account saved ☐)

Payment date	Account type
Bank name	Bank routing number
Account holder	Account number
Amount due (\$) <b>0.00</b>	Payment amount (\$)

**Transaction details**

Confirmation number <b>24926142728</b>	Transaction date/time <b>04/26/2022 00:39 AM</b>
Submitted by <b>YASUKO NEGITA</b>	

## Employee Wage and Withholding

**Withholding identification number**

1957

**Quarterly employee/payee wage reporting information****Totals** (see instructions)



New York State Department of Taxation and Finance

(8/22) V14

**Quarterly Combined Withholding, Wage Reporting,  
And Unemployment Insurance Return****NYS-45 WEB****Reference these numbers in all correspondence:**UI Employer  
registration number **580** **0**Withholding  
identification number **1957****Employer legal name:**

KU-RAKU NEW YORK INC.

Mark an X in only **one** box to indicate the quarter (a separate return must be completed for each quarter) and enter the year.Jan 1 - Mar 31 ☐ 1 Apr 1 - Jun 30 ☒ 2 July 1 - Sep 30 ☐ 3 Oct 1 - Dec 31 ☐ 4 Year **22** YYDo you offer dependent health insurance benefits to any employee? ..... Yes ☐ No ☒If seasonal employer, mark an X in the box ..... ☐**Number of employees**

Enter the number of full-time and part-time covered employees who worked during or received pay for the week that includes the 12th day of each month.

a. First month

**11**

b. Second month

**9**

c. Third month

**14**Disaster relief ☐**Part A - Unemployment insurance (UI) information**

1. Total remuneration paid this quarter ..... **67,954.00**

2. Remuneration paid this quarter to in excess of the UI wage base since January 1 ..... **17,966.00**

3. Wages subject to contribution (subtract line 2 from line 1) ..... **49,988.00**

4. UI contributions due  
UI rate ..... **4.025** % ..... **2,012.02**

5. Re-employment service fund (multiply line 3 x .00075) ..... **37.49**

6a. Interest on contributions ..... **0.00**

6b. UI previously underpaid with interest ..... **0.00**

7. Total of lines 4, 5, 6a and 6b ..... **2,049.51**

8. Enter UI previously overpaid ..... **0.00**

9. Total UI amounts due (if line 7 is greater than line 8, enter difference) ... **2,049.51**

10. Total UI overpaid (if line 8 is greater than line 7, enter the difference) \* ..... **0.00**

**Part B - Withholding tax (WT) information**

12. New York State tax withheld ..... **2,213.88**

13. New York City tax withheld ..... **1,354.74**

14. Yonkers tax withheld ..... **0.00**

15. Total tax withheld (add lines 12, 13, and 14) ..... **3,568.62**

16. WT credit from previous quarter's return (see instr.) ..... **0.00**

17. Form NYS-1 payments made for quarter ..... **3,568.62**

18. Total payments (add lines 16 and 17) ..... **3,568.62**

19. Total WT amounts due (if line 15 is greater than line 18, enter difference) ... **0.00**

20. Total WT overpaid (if line 18 is greater than line 15, enter difference here and mark an X in 20a or 20b) \* ..... **0.00**

20a. Apply to outstanding liabilities and/or refund ..... ☐

20b. Credit to next quarter withholding tax ..... ☐

21. Total payment due (add lines 9 and 19) ..... **2,049.51**

**\* An overpayment of either tax cannot be used to offset the amount due on the other tax.****Part C - Wage Reporting Summary**

C Total UI total remuneration/gross wages paid this quarter ..... **67,954.00** Total number of employees ..... **17**

D Total gross wages or distribution ..... **67,953.82** E Total tax withheld ..... **3,568.62**

**Sign your return:** I certify that the information on this return and any attachments is to the best of my knowledge and belief true, correct, and complete.

Taxpayer's signature

Signer's name

Title

Date

**07/20/2022 14:34:53**

Telephone number

Withholding  
identification number [REDACTED] 1957

**Part D – Form NYS-1 corrections/additions**

Web filed not applicable

**Part E – Change of business information**

23. If you permanently ceased paying wages, enter the date (MMDDYY) of the final payroll .....

24. Did you sell or transfer all or part of your business? ☐ Yes ☒ No

If Yes, indicate if sale or transfer was in ☐ Whole or ☐ Part

<b>Paid preparer's use</b>	Preparer's signature	Telephone number	Date	Mark an X if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
	Preparer's firm name (or yours, if self-employed)	Address		Preparer's EIN	
Payroll service name				Payroll service's EIN	

**Unemployment insurance (UI) payment details** (Account saved ☒)

Payment date <b>08/01/2022</b>	Account type <b>Business checking</b>
Bank name <b>JPMORGAN CHASE BANK, NA</b>	Bank routing number <b>021000021</b>
Account holder <b>KU-RAKU NEW YORK INC</b>	Account number <b>XXXXX1030</b>
Amount due (\$) <b>2,049.51</b>	Payment amount (\$) <b>2,049.51</b>

**Withholding tax (WT) payment details** (Account saved ☐)

Payment date	Account type
Bank name	Bank routing number
Account holder	Account number
Amount due (\$) <b>0.00</b>	Payment amount (\$)

**Transaction details**

Confirmation number <b>24926233785</b>	Transaction date/time <b>07/20/2022 02:34 PM</b>
Submitted by <b>YASUKO NEGITA</b>	

## Employee Wage and Withholding

**Withholding identification number**

1957

**Quarterly employee/payee wage reporting information****Totals** (see instructions)



New York State Department of Taxation and Finance

(10/22) V14

**Quarterly Combined Withholding, Wage Reporting,  
And Unemployment Insurance Return****NYS-45 WEB****Reference these numbers in all correspondence:**UI Employer  
registration number **580** **0**Withholding  
identification number **957****Employer legal name:**

KU-RAKU NEW YORK INC.

Mark an X in only **one** box to indicate the quarter (a separate return must be completed for each quarter) and enter the year.Jan 1 - Mar 31 ☐ 1 Apr 1 - Jun 30 ☐ 2 July 1 - Sep 30 ☒ 3 Oct 1 - Dec 31 ☐ 4 Year **22** YYDo you offer dependent health insurance benefits to any employee? .... Yes ☐ No ☒If seasonal employer, mark an X in the box ☐**Number of employees**

Enter the number of full-time and part-time covered employees who worked during or received pay for the week that includes the 12th day of each month.

a. First month

**14**

b. Second month

**15**

c. Third month

**18**Disaster relief ☐**Part A - Unemployment insurance (UI) information**

1. Total remuneration paid this quarter ..... **160,707.00**

2. Remuneration paid this quarter to in excess of the UI wage base since January 1 ..... **80,031.00**

3. Wages subject to contribution (subtract line 2 from line 1) ..... **80,676.00**

4. UI contributions due  
UI rate ..... **4.025** % ..... **3,247.21**

5. Re-employment service fund (multiply line 3 x .00075) ..... **60.51**

6a. Interest on contributions ..... **0.00**

6b. UI previously underpaid with interest ..... **0.00**

7. Total of lines 4, 5, 6a and 6b ..... **3,307.72**

8. Enter UI previously overpaid ..... **0.00**

9. Total UI amounts due (if line 7 is greater than line 8, enter difference) ... **3,307.72**

10. Total UI overpaid (if line 8 is greater than line 7, enter the difference) \* ..... **0.00**

**Part B - Withholding tax (WT) information**

12. New York State tax withheld ..... **6,518.48**

13. New York City tax withheld ..... **3,207.25**

14. Yonkers tax withheld ..... **0.00**

15. Total tax withheld (add lines 12, 13, and 14) ..... **9,725.73**

16. WT credit from previous quarter's return (see instr.) ..... **0.00**

17. Form NYS-1 payments made for quarter ..... **9,725.73**

18. Total payments (add lines 16 and 17) ..... **9,725.73**

19. Total WT amounts due (if line 15 is greater than line 18, enter difference) ... **0.00**

20. Total WT overpaid (if line 18 is greater than line 15, enter difference here and mark an X in 20a or 20b) \* ..... **0.00**

20a. Apply to outstanding liabilities and/or refund ..... ☐

20b. Credit to next quarter withholding tax ..... ☐

21. Total payment due (add lines 9 and 19) ..... **3,307.72**

**\* An overpayment of either tax cannot be used to offset the amount due on the other tax.****Part C - Wage Reporting Summary**

C Total UI total remuneration/gross wages paid this quarter ..... **160,707.00** Total number of employees ..... **18**

D Total gross wages or distribution ..... **160,706.68** E Total tax withheld ..... **9,725.73**

**Sign your return:** I certify that the information on this return and any attachments is to the best of my knowledge and belief true, correct, and complete.

Taxpayer's signature

Signer's name

Title

Date

**10/19/2022 00:05:07**

Telephone number



Withholding  
identification number [REDACTED] 1957

**Part D – Form NYS–1 corrections/additions**

Web filed not applicable

**Part E – Change of business information**

23. If you permanently ceased paying wages, enter the date (MMDDYY) of the final payroll .....

24. Did you sell or transfer all or part of your business? ☐ Yes ☒ No

If Yes, indicate if sale or transfer was in ☐ Whole or ☐ Part

<b>Paid preparer's use</b>	Preparer's signature	Telephone number	Date	Mark an X if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
	Preparer's firm name (or yours, if self-employed)	Address		Preparer's EIN	
Payroll service name				Payroll service's EIN	

**Unemployment Insurance (UI) payment details** (Account saved ☒)

Payment date <b>10/31/2022</b>	Account type <b>Business checking</b>
Bank name <b>JPMORGAN CHASE BANK, NA</b>	Bank routing number <b>021000021</b>
Account holder <b>KU-RAKU NEW YORK INC</b>	Account number <b>XXXXXX1030</b>
Amount due (\$) <b>3,307.72</b>	Payment amount (\$) <b>3,307.72</b>

**Withholding tax (WT) payment details** (Account saved ☐)

Payment date	Account type
Bank name	Bank routing number
Account holder	Account number
Amount due (\$) <b>0.00</b>	Payment amount (\$)

**Transaction details**

Confirmation number <b>24926321454</b>	Transaction date/time <b>10/19/2022 00:05 AM</b>
Submitted by <b>YASUKO NEGITA</b>	

## Employee Wage and Withholding

Withholding identification number

## 1957

**Quarterly employee/payee wage reporting information****Totals** (see instructions)



New York State Department of Taxation and Finance

(01/23) V14

**Quarterly Combined Withholding, Wage Reporting,  
And Unemployment Insurance Return****NYS-45 WEB****Reference these numbers in all correspondence:**UI Employer  
registration number **680** **0**Withholding  
identification number **1957****Employer legal name:**

KU-RAKU NEW YORK INC.

Mark an **X** in only **one** box to indicate the quarter (a separate return must be completed for each quarter) and enter the year.Jan 1 - Mar 31 ☐ 1 Apr 1 - Jun 30 ☐ 2 July 1 - Sep 30 ☐ 3 Oct 1 - Dec 31 ☒ 4 Year **22** YYDo you offer dependent health insurance benefits to any employee? ..... Yes ☐ No ☒If seasonal employer, mark an **X** in the box ☐**Number of employees**

Enter the number of full-time and part-time covered employees who worked during or received pay for the week that includes the 12th day of each month.

a. First month

b. Second month

c. Third month

**16****17****16**Disaster relief ☐**Part A - Unemployment insurance (UI) information**

1. Total remuneration paid this quarter ..... **143,706.00**

2. Remuneration paid this quarter to in excess of the UI wage base since January 1 ..... **115,893.00**

3. Wages subject to contribution (subtract line 2 from line 1) ..... **27,813.00**

4. UI contributions due UI rate **4.025** % ..... **1,119.47**

5. Re-employment service fund (multiply line 3 x .00075) ..... **20.86**

6a. Interest on contributions ..... **0.00**

6b. UI previously underpaid with interest ..... **0.00**

7. Total of lines 4, 5, 6a and 6b ..... **1,140.33**

8. Enter UI previously overpaid ..... **0.00**

9. Total UI amounts due (if line 7 is greater than line 8, enter difference) ... **1,140.33**

10. Total UI overpaid (if line 8 is greater than line 7, enter the difference) \* ..... **0.00**

**Part B - Withholding tax (WT) information**

12. New York State tax withheld ..... **5,513.58**

13. New York City tax withheld ..... **2,854.20**

14. Yonkers tax withheld ..... **0.00**

15. Total tax withheld (add lines 12, 13, and 14) ..... **8,367.78**

16. WT credit from previous quarter's return (see instr.) ..... **0.00**

17. Form NYS-1 payments made for quarter ..... **8,367.78**

18. Total payments (add lines 16 and 17) ..... **8,367.78**

19. Total WT amounts due (if line 15 is greater than line 18, enter difference) ... **0.00**

20. Total WT overpaid (if line 18 is greater than line 15, enter difference here and mark an **X** in 20a or 20b) \* ..... **0.00**

20a. Apply to outstanding liabilities and/or refund ..... ☐

20b. Credit to next quarter withholding tax ..... ☐

21. Total payment due (add lines 9 and 19) ..... **1,140.33**

**\* An overpayment of either tax cannot be used to offset the amount due on the other tax.****Part C - Wage Reporting Summary**

C Total UI total remuneration/gross wages paid this quarter ..... **143,706.00** Total number of employees ..... **19**

D Total gross wages or distribution ..... **143,706.39** E Total tax withheld ..... **8,367.78**

**Sign your return:** I certify that the information on this return and any attachments is to the best of my knowledge and belief true, correct, and complete.

Taxpayer's signature

Signer's name

Title

Date

**01/12/2023 11:15:24**

Telephone number

Withholding  
identification number [REDACTED] 1957

**Part D – Form NYS–1 corrections/additions**

Web filed not applicable

**Part E – Change of business information**

23. If you **permanently ceased paying wages**, enter the date (MMDDYY) of the final payroll .....

24. Did you sell or transfer all or part of your business? ☐ Yes ☒ No

If Yes, indicate if sale or transfer was in ☐ Whole or ☐ Part

<b>Paid preparer's use</b>	Preparer's signature	Telephone number	Date	Mark an X if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
	Preparer's firm name (or yours, if self-employed)	Address			Preparer's EIN
Payroll service name				Payroll service's EIN	

**Unemployment insurance (UI) payment details** (Account saved ☒)

Payment date <b>01/31/2023</b>	Account type <b>Business checking</b>
Bank name <b>JPMORGAN CHASE BANK, NA</b>	Bank routing number <b>021000021</b>
Account holder <b>KU-RAKU NEW YORK INC</b>	Account number <b>XXXXXX1030</b>
Amount due (\$) <b>1,140.33</b>	Payment amount (\$) <b>1,140.33</b>

**Withholding tax (WT) payment details** (Account saved ☐)

Payment date	Account type
Bank name	Bank routing number
Account holder	Account number
Amount due (\$) <b>0.00</b>	Payment amount (\$)

**Transaction details**

Confirmation number <b>34926021831</b>	Transaction date/time <b>01/12/2023 11:15 AM</b>
Submitted by <b>YASUKO NEGITA</b>	

## Employee Wage and Withholding

Withholding identification number

957

**Quarterly employee/payee wage reporting information****Totals** (see instructions)



New York State Department of Taxation and Finance

(04/23) V1.1

**Quarterly Combined Withholding, Wage Reporting,  
And Unemployment Insurance Return****NYS-45 WEB****Reference these numbers in all correspondence:**UI Employer  
registration number **580** **0**Withholding  
identification number **1957****Employer legal name:**

KU-RAKU NEW YORK INC.

Mark an X in only **one** box to indicate the quarter (a separate  
return must be completed for each quarter) and enter the year.Jan 1 - Mar 31 ☒ 1 Apr 1 - Jun 30 ☐ 2 July 1 - Sep 30 ☐ 3 Oct 1 - Dec 31 ☐ 4 Year **23**  
YYDo you offer dependent health insurance benefits to any employee? ..... Yes ☐ No ☒If **seasonal employer**, mark an X in the box ..... ☐**Number of employees**Enter the number of full-time and part-time covered employees  
who worked during or received pay for the week that includes  
the 12th day of each month.

a. First month

b. Second month

c. Third month

**16****19****17**Disaster relief ☐**Part A - Unemployment insurance (UI) information**

1. Total remuneration paid this quarter ..... **170,752.00**

2. Remuneration paid this quarter to  
in excess of the UI wage base  
since January 1 ..... **28,433.00**

3. Wages subject to contribution  
(subtract line 2 from line 1) ..... **142,319.00**

4. UI contributions due  
UI rate ..... **4.025** % ..... **5,728.34**

5. Re-employment service fund  
(multiply line 3 x .00075) ..... **106.74**

6a. Interest on contributions ..... **0.00**

6b. UI previously underpaid with  
interest ..... **0.00**

7. Total of lines 4, 5, 6a and 6b ..... **5,835.08**

8. Enter UI previously overpaid ..... **0.00**

9. **Total UI amounts due** (if line 7  
is greater than line 8, enter difference) ... **5,835.08**

10. Total UI overpaid (if line 8 is greater  
than line 7, enter the difference) \* ..... **0.00**

**Part B - Withholding tax (WT) information**

12. New York State tax withheld ..... **6,659.83**

13. New York City tax withheld ..... **3,627.74**

14. Yonkers tax withheld ..... **0.00**

15. Total tax withheld  
(add lines 12, 13, and 14) ..... **10,287.57**

16. WT credit from **previous**  
quarter's return (see instr.) ..... **0.00**

17. Form NYS-1 payments made  
for quarter ..... **10,287.57**

18. Total payments  
(add lines 16 and 17) ..... **10,287.57**

19. **Total WT amounts due** (if line 15 is  
greater than line 18, enter difference) ... **0.00**

20. Total WT overpaid (if line 18 is  
greater than line 15, enter difference  
here and mark an X in 20a or 20b) \* ..... **0.00**

20a. Apply to outstanding  
liabilities and/or refund ..... ☐

20b. Credit to next quarter  
withholding tax ..... ☐

21. **Total payment due**  
(add lines 9 and 19) ..... **5,835.08**

**\* An overpayment of either tax cannot be used to offset the amount due on the other tax.****Part C - Wage Reporting Summary**

C Total UI total remuneration/gross  
wages paid this quarter ..... **170,752.00** Total number of employees ..... **19**

D Total gross wages or distribution ..... **170,752.15** E Total tax withheld ..... **10,287.57**

**Sign your return:** I certify that the information on this return and any attachments is to the best of my knowledge and belief true, correct, and complete.

Taxpayer's signature

Signer's name

Title

Date

**04/23/2023 00:15:08**

Telephone number

Withholding  
identification number [REDACTED] 1957

**Part D – Form NYS–1 corrections/additions**

Web filed not applicable

**Part E – Change of business information**

23. If you permanently ceased paying wages, enter the date (MMDDYY) of the final payroll ..... [REDACTED]

24. Did you sell or transfer all or part of your business? ☐ Yes ☒ No

If Yes, indicate if sale or transfer was in ☐ Whole or ☐ Part

<b>Paid preparer's use</b>	Preparer's signature	Telephone number	Date	Mark an X if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
	Preparer's firm name (or yours, if self-employed)	Address		Preparer's EIN	
Payroll service name				Payroll service's EIN	

**Unemployment insurance (UI) payment details** (Account saved ☒)

Payment date <b>05/01/2023</b>	Account type <b>Business checking</b>
Bank name <b>JPMORGAN CHASE BANK, NA</b>	Bank routing number <b>021000021</b>
Account holder <b>KU-RAKU NEW YORK INC</b>	Account number <b>XXXXXX1030</b>
Amount due (\$) <b>5,835.08</b>	Payment amount (\$) <b>5,835.08</b>

**Withholding tax (WT) payment details** (Account saved ☐)

Payment date	Account type
Bank name	Bank routing number
Account holder	Account number
Amount due (\$) <b>0.00</b>	Payment amount (\$)

**Transaction details**

Confirmation number <b>34926123699</b>	Transaction date/time <b>04/23/2023 00:15 AM</b>
Submitted by <b>YASUKO NEGITA</b>	

## Employee Wage and Withholding

Withholding identification number

957

**Quarterly employee/payee wage reporting information****Totals** (see instructions)



# **EXHIBIT 4**

**CPLR 6219 Garnishee's Statements  
signed by Yasuko and Masahiko under  
oath on August 29, 2022**

.....X  
ORNRAT KLAWSRI, et al.,

Plaintiffs,

AFFIDAVIT

-v-

YASUKO NEGITA,

Defendant.

-----X

I, Yasuko Negita, do hereby swear that the following is true and accurate:

1. I am over eighteen (18) years old.
2. I submit this affidavit pursuant to CPLR 6219 and the information contained herein is to the best of my knowledge.
3. I do not have any assets except for a 2021 Lexus 350 which is under payment and a home located at 8 Floral Terrace, Tenafly, New Jersey 07670 which has two mortgages on it.
4. I have several bank accounts as noted below:
  - a. TDBank account ending in 8803 approximate balance \$309.37
  - b. TDBank account ending in 4751 with my husband Masahiko approximate balance \$1541.70
  - c. Chase Bank checking account ending in 8365 approximate balance \$2592.03
  - d. Chase Bank saving account ending in 4082 approximate balance \$858.29
  - e. Bank of America checking account ending in 1997 approximate balance \$4004.89
  - f. Bank of America savings account ending in 7791 approximate balance \$1072.59
  - g. Wells Fargo checking account ending in 6675 approximate balance \$3405.53
  - h. Wells Fargo savings account ending in 9608 approximate balance \$1939.29
5. I do not own any property or bank accounts located within this jurisdiction.
6. I am not owed any money from any person or entity in any jurisdiction.

Dated and Signed



YASUKO NEGITA  
08/29/22

-----X  
ORNRAT KEAWSRI, et al.,

Plaintiffs,

**AFFIDAVIT**

-v-

MASAHIKO NEGITA,

Defendant.  
-----X

I, Masahiko Negita, do hereby swear that the following is true and accurate:

1. I am over eighteen (18) years old.
2. I submit this affidavit pursuant to CPLR 6219 and the information contained herein is to the best of my knowledge.
3. I do not have any assets except for a 2015 Mercedes S550.
4. I have the following creditors:
  - a. NYS Tax liability in the approximate amount of \$1,100,000.00.
  - b. Student Loans in the approximate amount of \$600,000.00.
  - c. Loan from Chase Bank in the approximate amount of \$150,000.00.
5. I do not own any property or bank accounts located within this jurisdiction.
6. I am not owed any money from any person or entity in any jurisdiction.

Dated and Signed

  
MASAHIKO NEGITA

08/29/22



-----X  
ORNRAT KEAWSRI, et al.,

Plaintiffs.

**AFFIDAVIT**

-v-


MIHO MAKI,

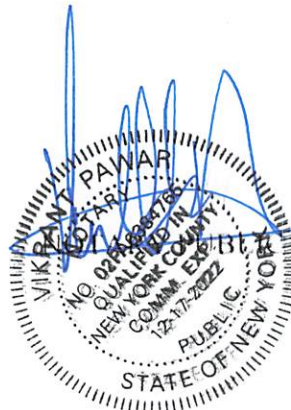
Defendant.  
-----X

I, Miho Maki, do hereby swear that the following is true and accurate:

1. I am over eighteen (18) years old.
2. I submit this affidavit pursuant to CPLR 6219 and the information contained herein is to the best of my knowledge.
3. I do not have any assets.
4. I have several bank accounts as noted below:
  - a. TDBank account ending in 8160 approximate balance \$1801.42
  - b. TDBank account ending in 9815 approximate balance \$345.49
  - c. Capital One checking account ending in 6700 approximate balance \$3150.59
  - d. Capital One savings account ending in 9758 approximate balance \$1338.95
5. I have the following credit card balances and debts:
  - a. Chase Freedom credit card ending in 5888 balance owed .44 cents
  - b. Chase Amazon card ending in 0812 balance owed \$199.80
  - c. Capitol One card ending in 2978 balance owed \$615.14.
  - d. I also owe an outstanding rent balance of approximately \$26,000.00
6. I am not owed any money from any person or entity in any jurisdiction.
7. I do not own any property or bank accounts located within this jurisdiction.

Signed and dated

  
08/29/22



# **EXHIBIT 5**

## **The Decisions of the United States District Court for the Southern District of New York**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 12/19/2022

-----X  
ORN RAT KEAWSRI, et al.,

Plaintiffs,

-v-

RAMEN-YA INC. et al,

Defendants.  
-----X

17-cv-02406 (LJL)

MEMORANDUM AND  
ORDER

LEWIS J. LIMAN, United States District Judge:

Judgment Creditors<sup>1</sup> move, pursuant to Federal Rule of Civil Procedure 69 and New York Civil Practice Law and Rules (“CPLR”) 5225(a) and (c), for an order (1) compelling Defendant Yasuko Negita (“Yasuko”) to immediately pay Judgment Creditors, in a certified check made payable to Florence Rostami Law LLC, the funds in the investment account Yasuko owns at Merrill Lynch, Pierce, Fenner & Smith, a Bank of America Company (“Merrill”), with the account number ending 3453; (2) compelling Defendant Masahiko Negita (“Masahiko”) to immediately pay Judgment Creditors, in a certified check made payable to Florence Rostami Law LLC, the funds in the investment account Masahiko owns at Merrill with the account number ending 3454; and (3) compelling Yasuko to transfer (and to execute and deliver any document necessary to effect such transfer) the real property she owns located at 309 Knickerbocker Road, Tenafly, New Jersey 07670 to the Marshal of the United States District Court for the District of New Jersey (the “Marshal”) for sale by the Marshal, the proceeds of such sale to be applied toward payment of the judgment. Dkt. No. 583. Judgment Creditors also

<sup>1</sup> The Judgment Creditors are Ornrat Keawsri, Sachina Nagae, Takayuki Sekiya, Siwapon Topon, Pimparat Ketchatrot, Thiratham Raksuk, Parichat Kongtuk, Tanon Leechot, Thanatharn Kulaptip, Wanwise Nakwirot, Natcha Natatpisit, and Parada Mongkolkajit.

move for an order, pursuant to Federal Rule of Civil Procedure 69 and CPLR 5234, (1) granting Judgment Creditors priority over other creditors over the property of Judgment Debtors,<sup>2</sup> including the investment account of Yasuko and Masahiko until the judgment is satisfied; and (2) compelling Yasuko and Masahiko to pay the remaining balance of the judgment forthwith to the extent that the funds in the Merrill accounts are insufficient to satisfy the judgment. *Id.* The Court heard argument from both parties on this motion at a conference held on December 19, 2022.

Familiarity with the prior proceedings in this case is assumed. On August 8, 2022, the Court awarded Judgment Creditors \$687,825.81 in damages and penalties and \$1,110,807.82 in attorneys' fees and costs and post-judgment interest against Judgment Debtors jointly and severally. Dkt. No. 512. Judgment for this amount was entered by the Clerk of Court on August 10, 2022. Dkt. No. 514. To date, Judgment Debtors have not paid any portion of the Judgment. Dkt. No. 584 ¶ 7; Dkt. No. 607 ¶ 4.

“As a general rule, once a federal court has entered judgment, it has ancillary jurisdiction over subsequent proceedings necessary to ‘vindicate its authority, and effectuate its decrees.’” *Dulce v. Dulce*, 233 F.3d 143, 146 (2d Cir. 2000) (quoting *Peacock v. Thomas*, 516 U.S. 349, 354 (1996)). “This includes proceedings to enforce the judgment.” *Id.*; see *Jones v. Milk River Café, LLC*, 2022 WL 3300027, at \*3 (E.D.N.Y. Aug. 11, 2022); *VFS Fin., Inc. v. Elias-Savion-Fox LLC*, 73 F. Supp. 3d 329, 335 (S.D.N.Y. 2014). Under Federal Rule of Civil Procedure 69, state law generally supplies the procedures for enforcement of the judgment. The Rule provides: “The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located . . . .” Fed. R.

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<sup>2</sup> The Judgment Debtors are Ramen-Ya Inc. (“RYI”), Yasuko, Masahiko, and Miho Maki.



Civ P. 69(a)(1).

CPLR 5225(a) provides in pertinent part:

Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment debtor is in possession or custody of money or other personal property in which he has an interest, the court shall order that the judgment debtor pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff.

CPLR 5225(c) provides that “[t]he court may order any person to execute and deliver any document necessary to effect payment or delivery.”

Judgment Creditors have submitted evidence that Yasuko maintains an investment account at Merrill with the account number ending in 3453, that Masahiko maintains an investment account at Merrill with an account number ending in 3454, and that they collectively hold cash and other assets with a value of \$218,000. Dkt. No. 584 ¶ 8; Dkt. No. 602-1. The Court has authority under CPLR 5225(a) to order Yasuko and Masahiko to turn over the funds in those accounts to Judgment Creditors.

That the Merrill accounts were opened in New Jersey does not change this conclusion.<sup>3</sup> “[A]s long as the New York court has personal jurisdiction over a defendant, regardless of whether it is the judgment debtor himself, or the garnishee bank, the court may order it to turn over out-of-state property to a judgment creditor.” *McCarthy v. Wachovia Bank, N.A.*, 759 F. Supp. 2d 265, 275 (E.D.N.Y. 2011); *see also Koehler v. Bank of Bermuda Ltd.*, 911 N.E.2d 825, 830 (N.Y. 2009).

Judgment Debtors argue that CPLR 5205(c)(2) protects them from having to turn over

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<sup>3</sup> Originally, it was represented to the Court that the investment accounts were opened in New York County. Dkt. No. 584 ¶ 8. However, the Court was informed at the conference on December 19, 2022 that the accounts were actually opened in New Jersey.

assets in their retirement accounts. Dkt. No. 604 at 2.<sup>4</sup> That provision shields certain retirement accounts from turnover or garnishment by creditors. C.P.L.R. 5205(c)(2); *see Bellco Drug Corp. v. Bear Stearns & Co., Inc.* 1999 WL 399903, at \*2 (N.Y. Cty Court Nassau Cty Apr. 12, 1999) (holding that all trusts, custodial accounts, monies, assets or interests qualified as individual retirement accounts under Section 408 of the Internal Revenue Code are exempt from attachment to enforce a money judgment). However, it does not apply here. CPLR 5205 goes on to state that “[a]dditions to an asset described in paragraph two of this subdivision shall not be exempt from application to the satisfaction of a money judgment if (i) made after the date that is ninety days before interposition of the claim on which such judgment was entered, or (ii) deemed to be voidable transactions under article ten of the debtor and creditor law.” C.P.L.R. 5205(c)(5); *see VFS Fin., Inc. v. Elias-Savion-Fox LLC*, 73 F. Supp. 3d 329, 348 (S.D.N.Y. 2014) (“Under the anti-garnishment statute, ‘any contributions to [the debtor’s SRA/IRA] account made after the date that is 90 days before the interposition of the claim on which the judgment herein was entered are not exempt from execution.’” (quoting *Bellco*, 1999 WL 399903, at \*2)).

This case was filed on April 3, 2017. Notwithstanding Judgment Creditors’ subpoena requiring Judgment Debtors to produce all account statements for accounts in which they had any legal or equitable interest from January 1, 2014 forward, Dkt No. 577-1, Judgment Debtors have not submitted any evidence that the funds in the two accounts were deposited prior to the date that is 90 days before April 3, 2017. Therefore, the exemption does not apply, and Judgment Debtors are required to, and will be ordered to, turn over the funds in the accounts.<sup>5</sup>

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<sup>4</sup> Judgment Debtors refer to CPLR 5405(c)(2). That provision has to do with the fees payable when a foreign judgment is filed in New York courts. The Court assumes that the reference to CPLR 5405(c)(2) is the product of a typographical error.

<sup>5</sup> At the conference held on December 19, 2022, Judgment Debtors stated for the first time that they have evidence that certain funds in these accounts were deposited prior to the date that is 90

Judgment Creditors also ask for an order pursuant to CPLR 5225(a) compelling Yasuko to transfer (and to execute and deliver any document necessary to effect such transfer) the real property she owns located at 309 Knickerbocker Road, Tenafly, New Jersey 07670 to the Marshal of the United States District Court for the District of New Jersey (the “Marshal”) for sale by the Marshal, the proceeds of such sale to be applied toward payment of the judgment. Dkt. No. 583. Judgment Debtors argue that the Court does not have jurisdiction over the property located in New Jersey, Judgment Creditors should seek relief from the United States District Court for the District of New Jersey where Judgment Creditors have domesticated the judgment, and Plaintiff do not advance any arguments over how they would have priority over the real property “especially since there are at least two banks who are primary creditors and have liens and mortgages on that real property.” Dkt. No. 604 at 1. They also argue that New Jersey may have a homestead exemption. *Id.* Judgment Creditors respond that the Court has ancillary jurisdiction to enforce the judgment, that Yasuko has no basis to assert the rights of other lienholders who can assert their rights as appropriate, and that because the Court has personal jurisdiction over the Judgment Debtors it also has jurisdiction to order them to turn over property (real or personal) outside of the District (and outside the State). Dkt. No. 608 at 5-6.

The basis for the order that Plaintiffs seek, *i.e.*, CPLR 5225(a), only applies to a judgment debtors’ “possession or custody of *money or other personal property* in which he has an

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days before April 3, 2017. No such evidence was offered in connection with Judgment Debtors’ opposition to this motion, which was filed approximately 20 days after Judgment Creditors filed their motion. Nor was any such evidence provided in connection with Judgment Creditors’ subpoena which was originally returnable in August 2022. Dkt. No. 577-1. The Court makes this decision on the basis of the evidence and the record before it. To the extent that Judgment Debtors have new evidence, the proper vehicle within which to raise such evidence is in a motion for reconsideration, assuming that such motion satisfies the appropriate standards. It is not to reopen this motion or to require Judgment Creditors to respond to proffers offered on the fly during oral argument.

interest.” C.P.L.R. 5225(a) (emphasis added). In other words, it can only be used to force a turnover of money and personal property of the Judgment Debtor. Here, however, Judgment Creditors are seeking a turnover order of Yasuko’s real property and the deed to that real property, which are not subject to turnover by this statutory provision. *See DeFlora Lake Development Assocs., Inc. v. Hyde Park*, 689 F. App’x 93 (2d Cir. 2017) (“The disposition of real property is not subject to turnover order under CPLR § 5225”); *Bernard v. Lombardo*, 2016 WL 7377240, at \* 2; *Gryphon Domestic VI, LLC v. APP Int’l Fin. Co., B.V.*, 836 N.Y.S.2d 4, 12 (1st Dep’t 2007) (holding that real property was not subject to turnover order under CPLR 5225(a)).

Plaintiffs acknowledge that the “authority conferred to New York courts under CPLR 5225 is, by its terms, directed toward personal property,” but note that the “Court can, in the circumstances of this matter, issue orders in aid of Judgment Creditors’ rights to turnover of property held in other jurisdictions.” Dkt. No. 608 at 6. Plaintiffs appear to point to CPLR 5240 as authority for this proposition. *Id.* This argument is unavailing. “CPLR 5240 permits a court at any time, on its own initiative or the motion of any interested person’ to issue an order denying, limiting, conditioning, regulating, extending or modifying the use of any enforcement procedure’—and therefore grants the court substantial authority to order equitable relief.” *Anderson Kill P.C. v. Anderson Kill P.C. as Escrowee*, 17 N.Y.S.3d 381 (N.Y. Sup. Ct.), *aff’d sub nom. Anderson Kill, P.C. v. Anderson Kill, P.C.*, 134 A.D.3d 552, 22 N.Y.S.3d 20 (2015). However, the plain purpose of CPLR 5240 is “to prevent the brutal use of legal procedures against a judgment debtor.” *Midlantic Nat. Bank/N. v. Reif*, 732 F. Supp. 354, 356 (E.D.N.Y. 1990); *see Plymouth Venture Partners, II, L.P. v. GTR Source, LLC*, 183 N.E.3d 1185, 1193 (N.Y. 2021). In other words, “[i]ts use is strictly to aid a party inequitably burdened by the use

of enforcement procedures by his adversary and to allow him an opportunity to either meet his legal obligation or postpone the enforcement of a judgment until such time that its enforcement is more properly sought.” *Reif*, 732 F. Supp. 354, 356–57 (quoting *Kolortron Sys., Inc. v. Casey*, 688, 500 N.Y.S.2d 36, 36 (2d Dep’t 1986)); *see also KLS Diversified Master Fund, LP. v. McDevitt*, 2022 WL 220058, at \*5 (S.D.N.Y. Jan. 25, 2022). In light of this purpose of the statute, this Court declines to use CPLR 5240 to allow the Judgment Creditors to bypass the clear language of CPLR 5225(a) and obtain a turnover order regarding the New Jersey property. *See Adler v. Solar Power, Inc.*, 2018 WL 11447340, at \*2 (S.D.N.Y. Apr. 9, 2018) (“New York courts have recognized that concerns of comity and sovereignty render attachment of real property located outside of the state inappropriate at the very least.”).

Thus, Plaintiffs’ request for a turnover order of Yasuko’s property in New Jersey pursuant to CPLR 5225(a) or CPLR 5240 is denied, without prejudice to Plaintiffs providing a different, valid basis for such an order.

With respect to the requested order under CPLR 5234, the motion of Judgment Creditors for an order compelling Yasuko and Masahiko to pay the remaining balance of the judgment forthwith to the extent that the funds in the Merrill accounts are insufficient to satisfy the judgment is denied. “[A] judgment creditor seeking a turnover order must identify the particular property as to which it seeks a turnover, whether a specific bank account, account receivable, or office furniture.” *Bernardo v. Lombardo*, 2016 WL 7377240, at \*2 (S.D.N.Y. Nov. 23, 2016) (internal citations and quotations omitted). *See also Mattel, Inc. v. www.fisher-price.online*, 2022 WL 2801022, at \*14 (S.D.N.Y. July 18, 2022) (“Courts in this District have denied plaintiffs’ section 5225 motions without prejudice when plaintiffs fail to identify the particular property as to which they seek a turnover.”).

Judgment Creditors argued at the December 19, 2022 conference that they should be excused from the requirement that they identify the particular property as to which they seek a turnover as Judgment Debtors have not been forthcoming about the nature and extent of their U.S. property and assets. However, where a judgment debtor is not forthcoming about his or her assets in response to subpoenas and document requests, the proper remedy is a motion for contempt sanctions for failure to comply with court orders regarding postjudgment discovery, including for criminal contempt if the standards for such relief are met. It is not, in the first instance, a blanket order requiring the judgment debtor to turn over all of his or her assets without identifying those assets.

Finally, the motion of Judgment Creditors under CPLR 5234 for an order granting Judgment Creditors priority over other creditors over the property of Judgment Debtors is denied as not ripe for consideration. Judgment Creditors have not, at this point, identified any particular creditor who has claimed priority to any of Judgment Debtors' property. Judgment Debtors represented at argument that there is no competing turnover order with respect to the investment accounts. Judgment Creditors may reapply for such relief in the event that this issue later becomes ripe.

### **CONCLUSION**

The motion to enforce the judgment is GRANTED IN PART and DENIED IN PART.  
The Clerk of Court is respectfully directed to close Dkt. No. 583.

SO ORDERED.

Dated: December 19, 2022  
New York, New York



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LEWIS J. LIMAN  
United States District Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 1/24/2023

-----X  
ORN RAT KEAWSRI, et al.,

Plaintiffs,

-v-

RAMEN-YA INC. et al,

Defendants.  
-----X

17-cv-02406 (LJL)

MEMORANDUM AND  
ORDER

LEWIS J. LIMAN, United States District Judge:

The RYI Defendants,<sup>1</sup> as Judgment Debtors, move for reconsideration of this Court’s order of December 19, 2022, ordering Yasuko and Masahiko Negita to turn over funds in Merrill accounts ending in 3453 and 3454 (together, “Merrill Accounts” and, each individually, “Merrill Account”). The RYI Defendants argue, based on purportedly newly-discovered evidence, that all but \$11,451.26 in the account ending 3454 is exempt under C.P.L.R. § 5205(c)(2) and all but \$12,932.19 in the account ending 3455 is exempt under that same provision of the C.P.L.R. Dkt. No. 627. For the reasons that follow, the motion is denied.

**BACKGROUND**

Familiarity with the prior proceedings in this matter and the Court’s prior opinions and orders are assumed. Plaintiffs and Judgment Creditors brought this action under the Fair Labor Standards Act (“FLSA”) and New York Labor Law (“NYLL”) against the RYI Defendants,

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<sup>1</sup> The RYI Defendants are Yasuko Negita (“Yasuko”), Masahiko Negita (“Masahiko”), Miho Maki (“Maki”), and Ramen-Ya Inc. RYI Defendants have occasionally been referred to as the RYI Judgment Debtors and Plaintiffs occasionally have been referred to as the Judgment Creditors. For convenience, the Court refers to “RYI Defendants” and to “Plaintiffs” in this Memorandum and Order.

Y&S International Corporation (“Y&S”), Kenji Kora (“Kora”), and others. Dkt. No. 182. On August 8, 2022, the Court awarded Plaintiffs \$687,825.81 in damages and penalties, \$1,110,807.82 in attorneys’ fees and costs, as well as post-judgment interest, and held that the RYI Defendants as well as Y&S and Kora are jointly and severally liable for all amounts due. Dkt. No. 512. The clerk entered judgment in that amount on August 10, 2022. Dkt. No. 514 ¶ 8.

Since then, Plaintiffs have sought to collect from the RYI Defendants, as well as Y&S and Kora. On August 15, 2022, Plaintiffs served on each of the RYI Defendants a subpoena duces tecum and subpoena ad testificandum compelling their attendance and requiring them to produce certain documents related to the nature, extent, and location of their assets. Dkt. No. 577 ¶ 6. The subpoenas served on Yasuko, Negita, and Maki requested, among other things, financial account information, both for accounts held in the United States and in any foreign country. *Id.* ¶ 7.

After the subpoenas were served, RYI Defendants sought various deadline extensions for the production of documents as well as for the depositions of the RYI Defendants. *Id.* ¶¶ 8–11. On August 25, 2022, the Court ordered the RYI Defendants to deliver to counsel for Plaintiffs “all documents identified in the subpoena duces tecum and subpoena ad testificandum served on each of the RYI Defendants.” Dkt. No. 523. On August 25, 2022, Plaintiffs agreed to extend the deadline for RYI Defendants to produce all responsive documents until August 29, 2022. Dkt. No. 577 ¶ 12. On August 29, 2022, the RYI Defendants failed to produce responsive documents and instead asserted various objections to each category of documents set forth in the subpoenas. *Id.* ¶ 15.

Due to the RYI Defendants’ refusal to produce responsive documents, Plaintiffs filed a motion on August 31, 2022 requesting an order (i) finding the RYI Defendants in contempt of



court, (ii) compelling the RYI Defendants to produce all documents and information sought by Plaintiffs, and (iii) imposing sanctions against each of the RYI Defendants and their respective counsel for their contempt of court, among other relief. Dkt. No. 530. The Court held a conference on September 27, 2022, regarding that request. Dkt. No. 560. At that conference, the Court granted Plaintiffs' motion in part and denied it in part. The Court found that "Plaintiffs have established by clear and convincing evidence that each of the Defendants have violated the Court's rulings through Defendants' refusal to produce documents and information sought by Plaintiffs." *Id.* at 1–2. The Court therefore imposed sanctions on RYI Defendants to compel compliance. *Id.* at 2.

Plaintiffs made their motion to enforce the judgment and for turnover on November 18, 2022, asking for the turnover of funds in the Merrill Accounts. Dkt. No. 583. In their declaration in support of that motion, Plaintiffs offered evidence that Yasuko owned the Merrill Account ending in 3453 and Masahiko owned the Merrill Account ending in 3454. Dkt. No. 584. At a conference with the Court on November 23, 2022, counsel for Plaintiffs foreshadowed the issue that is now raised on this motion. During colloquy with the Court on the status of the RYI Defendants' compliance with the Court's orders and the schedule with respect to the motion to enforce the judgment and for turnover, Plaintiffs' counsel stated that the RYI Defendants had the "responsibility to produce documents with respect to the moneys that were deposited into the [Merrill] account because they may have the right to withhold some of those moneys pursuant to the rules" and noted that the RYI Defendants had not done so. Dkt. No. 619 at 59. She stated: "I'm just letting them know, they need to provide the specifics with respect to the account." *Id.* The Court responded: "Why isn't the appropriate procedure for them, in their opposition papers, to indicate the amounts that need to be withheld under New York State law ... [and] [i]f they

don't indicate amounts that need to be withheld, then they would be considered [to have] waived that issue.” *Id.* at 59–60. The Court asked counsel for the RYI Defendants whether he objected to proceeding in that manner and he responded that he did not. *Id.* at 60. The Court then gave the RYI Defendants the time they requested to respond to Plaintiffs’ motion. *Id.*

On December 8, 2022, the RYI Defendants submitted their response to the motion. Dkt. No. 604. The response argued broadly (and incorrectly) that C.P.L.R. § 5205(c)(2) shielded retirement accounts from turnover and any monies in the Merrill Accounts should be withheld in full. *Id.* In their reply memorandum dated December 15, 2022, Plaintiffs correctly pointed out that C.P.L.R. § 5205(c) does not protect funds in retirement accounts if deposited after the date that is ninety days before the commencement of a lawsuit. Dkt. No. 608 at 3. Plaintiffs also argued that the RYI Defendants had failed to produce evidence that the Merrill Accounts were opened prior to January 3, 2017 (*i.e.*, 90 days prior to the commencement of their lawsuit), or that deposits were made into the accounts prior to that date, such that monies in the accounts would be exempt. Dkt. No. 608 at 4. By order of December 16, 2022, the Court set a hearing for December 19, 2022 on the motion to enforce the judgment and for turnover and directed that the parties be prepared to present any evidence that they wished the Court to consider on that motion. Dkt. No. 609. RYI Defendants did not submit any evidence at the hearing on December 19, 2022, but they argued that monies in the accounts had been deposited prior to January 3, 2017 and were therefore exempt.

The Court’s order of December 19, 2022 granted Plaintiffs’ motion, pursuant to C.P.L.R. § 5225(a), to compel Yasuko to immediately pay Plaintiffs the funds in the Merrill Account ending 3453 and Masahiko to immediately pay Plaintiffs the funds in the Merrill Account ending 3454. Dkt. No. 616 at 4. The Court rejected the RYI Defendants’ argument that C.P.L.R.

§ 5205(c)(2) shielded the assets in the Merrill Accounts from being turned over to satisfy the judgment. *Id.* at 3–4. The Court noted that while that provision shields retirement accounts from turnover or garnishment by creditors, it does not apply to additions to a retirement account made after the date that is ninety days before interposition of the claim on which judgment was entered. *Id.* That date here would have been January 3, 2017 because Plaintiffs’ complaint was filed on April 3, 2017. The Court wrote:

Notwithstanding Judgment Creditors’ subpoena requiring Judgment Debtors to produce all account statements for accounts in which they had any legal or equitable interest from January 1, 2014 forward, Dkt. No. 577-1, Judgment Debtors have not submitted any evidence that the funds in the two accounts were deposited prior to the date that is 90 days before April 3, 2017. Therefore, the exemption does not apply, and Judgment Debtors are required to, and will be order to, turn over the funds in the accounts.

*Id.* at 4. In a footnote to its Memorandum and Order, the Court noted:

At the conference held on December 19, 2022, Judgment Debtors stated for the first time that they have evidence that certain funds in these accounts were deposited prior to the date that is 90 days before April 3, 2017. No such evidence was offered in connection with Judgment Debtors’ opposition to this motion, which was filed approximately 20 days after Judgment Creditors filed their motion. Nor was any such evidence provided in connection with Judgment Creditors’ subpoena which was originally returnable in August 2022. Dkt. No. 577-1. The Court makes this decision on the basis of the evidence and the record before it. To the extent that Judgment Debtors have new evidence, the proper vehicle within which to raise such evidence is in a motion for reconsideration, assuming that such motion satisfies the appropriate standards. It is not to reopen this motion or to require Judgment Creditors to respond to proffers offered on the fly during oral argument.

*Id.* at 4 n.5.

## DISCUSSION

The RYI Defendants argue that the Court should reconsider its December 19, 2022 order “because newly submitted evidence clearly demonstrates that majority [sic] of the funds in the Merrill accounts were deposited prior to January 3, 2017.” Dkt. No. 627 at 2. In support of that motion, they submit bank statements that show that Masahiko made deposits totaling \$11,451.26

to the account ending 3454 since 2017 and Yasuko made deposits to the account ending in 3452 totaling \$12,932.19 since 2017. *Id.* They claim only \$14,000 (\$7,000 each) was deposited after January 3, 2017. *Id.* The RYI Defendants do not object to the turnover of the \$14,000 but argue that the remainder of the funds in the accounts are exempt. *Id.* at 4. Plaintiffs respond that reconsideration is not appropriate because the RYI Defendants do not identify any newly discovered facts that they could not have located without reasonable diligence: Yasuko and Masahiko were aware months before the motion for turnover that the account statements were relevant to the identification of assets when those account statements were subpoenaed on August 15, 2022, yet in response to those subpoenas they produced only one page of their respective Merrill Accounts for the April to June 2022 time period. Dkt. No. 628 at 5. Plaintiffs also argue that the December 19, 2022 order should not be reconsidered on grounds of “manifest injustice”; that basis for relief is not available when the motion is based on newly-discovered evidence and there is no manifest injustice in requiring the RYI Defendants to turn over funds in the Merrill Accounts that they earned from their violations of FLSA and the NYLL, particularly when they could have asserted evidence to support the exemption far earlier and in response to Plaintiffs’ motion but failed to do so. *Id.* at 9–11.

The RYI Defendants style their motion as one for reconsideration. “A motion for reconsideration should be granted only if the movant identifies ‘an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.’” *Spin Master Ltd. v. 158*, 2020 WL 5350541, at \*1 (S.D.N.Y. Sept. 4, 2020) (quoting *Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Tr.*, 729 F.3d 99, 104 (2d Cir. 2013)). Reconsideration of a court’s previous order is an “extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources.” *In*

*re Health Mgmt. Sys., Inc. Sec. Litig.*, 113 F. Supp. 2d 613, 614 (S.D.N.Y. 2000). The standard for granting a motion for reconsideration “is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the Court.” *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995). A motion for reconsideration is not a “vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a second bite at the apple.” *Spin Master*, 2020 WL 5350541, at \*1 (quoting *Analytical Surveys, Inc. v. Tonga Partners, L.P.*, 684 F.3d 36, 52 (2d Cir. 2012)).

In opposition, Plaintiffs make reference to the standards for relief under Federal Rule of Civil Procedure 60(b). The rule addresses the standards and procedures for the court to relieve a party “from a final judgment, order, or proceeding.” Fed. R. Civ. P. 60(b). Federal Rule of Civil Procedure 60(b)(2) provides that within a year of the entry of the judgment or order or the date of the proceeding, a party may move for relief based on “newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b).” Fed. R. Civ. P. 60(b)(2). The Second Circuit has repeatedly held that:

To prevail on a motion for relief from a judgment on the grounds of newly discovered evidence, a party must establish that: “(1) the newly discovered evidence was of facts that existed at the time of trial or other dispositive proceeding, (2) the movant must have been justifiably ignorant of them despite due diligence, (3) the evidence must be admissible and of such importance that it probably would have changed the outcome, and (4) the evidence must not be merely cumulative or impeaching.”

*Metzler Inv. Gmbh v. Chipotle Mexican Grill, Inc.*, 970 F.3d 133, 146–47 (2d Cir. 2020) (quoting *United States v. Int’l Bhd. of Teamsters*, 247 F.3d 370, 392 (2d Cir. 2001)).<sup>2</sup>

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<sup>2</sup> Federal Rule of Civil Procedure 60(b)(6) also provides that the court may relieve a party of a final order, at any time, for “any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(6).

In the case at hand, the RYI Defendants have not shown “new evidence” or “manifest injustice” justifying reconsideration of this Court’s December 19 order or relief under Rule 60(b)(2). The RYI Defendants’ motion is based on the contention that the majority of the funds in the Merrill Accounts were deposited prior to January 3, 2017. But that information was available to the RYI Defendants at the time that they filed their opposition to the motion to enforce the judgment and for turnover. It is based on deposits made by Yasuko and Masahiko themselves. There is no reason, and the RYI Defendants offer none, why, if they believed that the funds were exempt, they could not have submitted an affidavit or a declaration in connection with their opposition, explaining that the funds were exempt. Nor were the account statements new evidence that was not previously available to the RYI Defendants before the Court entered its order. The account statements were requested by Plaintiffs as early as August 2022. They were the subject of an order to produce dated August 25, 2022, with a deadline of August 29,

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“Rule 60(b)(6) [is] a catch-all provision that ‘is properly invoked only when there are extraordinary circumstances justifying relief, when the judgment may work an extreme and undue hardship, and when the asserted grounds for relief are not recognized in clauses (1)–(5) of the Rule.’” *Pastor v. P’ship for Children’s Rts.*, 856 F. App’x 343, 344–45 (2d Cir. 2021) (quoting *Metzler Inv. GmbH v. Chipotle Mexican Grill, Inc.*, 970 F.3d 133, 143 (2d Cir. 2020)); see *Obra Pia Ltd. v. Seagrape Invs. LLC*, 2021 WL 1978545, at \*2 (S.D.N.Y. May 18, 2021) (same). In other words, “if the reasons offered for relief from judgment can be considered in one of the more specific clauses of Rule 60(b), such reasons will not justify relief under Rule 60(b)(6).” *Castro v. Bank of New York Mellon*, 852 F. App’x 25, 30 (2d Cir. 2021) (quoting *Int’l Brotherhood of Teamsters*, 247 F.3d at 391–92). “The burden of proof on a Rule 60(b) motion is on the party seeking relief from the earlier judgment or order.” *Obra Pia Ltd.*, 2021 WL 1978545, at \*2 (quoting *In re Gildan Activewear, Inc. Sec. Litig.*, 2009 WL 4544287, at \*2 (S.D.N.Y. Dec. 4, 2009)).

Here, Federal Rule of Civil Procedure 60(b)(6) does not apply because “[a]lthough [the RYI Defendants] failed to carry [their] burden under” Rule 60(b)(2), as explained *supra* pp. 8–9, their “reasons for seeking relief from the judgment fell within” that more specific clause “thereby disqualifying [them] from obtaining relief under Rule 60(b)(6).” *Castro*, 852 F. App’x at 30 . The RYI Defendants also did not invoke this catch-all provision in their motion papers or explain why it would apply and thus separately have not met their burden. See *Obra Pia Ltd.*, 2021 WL 1978545, at \*2 (noting burden is on person moving for Rule 60(b) relief).

2022. The RYI Defendants were held in contempt in September 2022 for failure to produce the account statements with additional sanctions running each day in which they were not produced, Dkt. No. 560, the Court gave the RYI Defendants notice in late November 2022 of the need to submit specific information to the Court justifying any withholdings under New York State law as to the Merrill Accounts and then gave them the time they needed to submit their opposition to the motion, Dkt. No. 619 at 59–60, and the Court directed the RYI Defendants on December 16, 2022 to bring to Court any evidence they intended to rely upon in opposition to the motion, Dkt. No. 609. The RYI Defendants failed to produce the account statements in response to any of these requests or demands. To the contrary, it was not until December 19, 2022—months after the RYI Defendants had been ordered to produce the account statements—that the RYI Defendants even requested the account statements from their representative at Merrill. Dkt. No. 629-2 at 5. And then the account representative was able to readily and quickly produce the account statements.

The account statements thus are not newly discovered evidence or new evidence. They are evidence that the RYI Defendants always had available to them with the sending of an email. They simply decided not to request them in response to Plaintiffs’ subpoenas and the Court’s prior orders. To grant the motion to reconsider now, on the basis of the account statements, would be to reward the RYI Defendants for their own intransigence. A party may not obtain relief based upon evidence that it could have offered earlier but, either through negligence or deliberate sandbagging, chose not to offer. To do so neither satisfies Local Rule 6.3 nor Rule 60(b).

Because the RYI Defendants' request for relief fails regardless, the Court does not decide whether Local Rule 6.3 (for motions for reconsideration or reargument) or Federal Rule of Civil Procedure 60(b) applies.<sup>3</sup>

### CONCLUSION

The motion for reconsideration is DENIED.

The Clerk of Court is respectfully directed to close Dkt. No. 627.

SO ORDERED.

Dated: January 24, 2023  
New York, New York



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LEWIS J. LIMAN  
United States District Judge

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<sup>3</sup> Rule 60(b) does not apply to interlocutory orders. *See* Fed. R. Civ. P. 60(b), advisory committee notes to 1946 amendment (“The addition of the qualifying word ‘final’ emphasizes the character of the judgments, orders or proceedings from which Rule 60(b) affords relief, and hence interlocutory orders are not brought within the restrictions of the rule, but rather they are left subject to the complete power of the court rendering them to afford relief from them as justice requires.”); *see also Stern v. Highland Lake Homeowners*, 2021 WL 1164718, at \*4 (S.D.N.Y. Mar. 26, 2021) (Rule 60(b) not applicable to preliminary injunctions which are not final judgments or orders); *Bridgeforth v. Mckeon*, 2012 WL 3962378, at \*2 (W.D.N.Y. Sept. 10, 2012) (Rule 60(b) not applicable to interlocutory order).